THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION No.21324 OF 2005

ORDER: (Per JC,J)

The writ petitioner is a limited company, carrying on business in transporting goods and chose to describe it as "express distribution and logistic company". It appears that the writ petitioner has a transshipment godown at Purshottampuram village, Ichapuram Mandal, Srikakulam District. The said godown was inspected on 05.08.2005 and the Deputy Commercial Tax Officer, Vigilance and Enforcement, Srikakulam seized 48 consignments lying in the godown. Thereafter, a notice, dated 08.08.2005 was received by the petitioner from the Department calling upon the petitioner to produce necessary documents and information. The matter was thereafter transferred to the second respondent herein for further action. Aggrieved, the petitioner preferred an appeal to the first respondent. The first respondent by his order dated 16.09.2005 disposed of the appeal.

Under the said order, all the 48 consignments seized from the petitioner were divided into 5 categories. Insofar as the 1st and 3rd categories are concerned, the 1st respondent came to the conclusion that the seizure is not warranted and directed the goods to be released forthwith. Insofar as category Nos.2 and 5 are concerned, the goods were ordered to be released on condition that the petitioner gives security by way of deposit twice the tax payable on those consignments. Insofar as the 4th category is concerned, the claim of the petitioner is that these consignments are meant to be delivered to various government/public sector undertakings outside the state of A.P. Therefore, the

1st respondent directed that the goods covered under the 4th category be released on the satisfactory proof of the fact that the goods are in fact required to be delivered to the various government/public sector undertakings.

Complaining that in spite the appellate order of the 1st respondent, the other respondents are not releasing the goods, the present writ petition is filed with a prayer as follows:

> "…to issue a Writ of order or direction more specifically one in the nature of writ of Mandamus declaring the action of 2nd and 3rd respondents in not releasing all the seized 48 consignments of the petitioner inspite of the orders of the 1st respondent in appeal No.VZM/VAT/05-06 dated 16-09-2005 as illegal, arbitrary, vindictive and violative of the provisions of the A.P.VAT Act 2005 and the rules made thereunder, violative of principles of natural justice and violative of Articles 14 and 19 of the Constitution of India and consequently by directing the 2nd and 3rd respondents to release all the 48 consignments of the petitioner herein forthwith in compliance with the orders of the 1st respondent dated 16.09.2005…"

Heard the learned Government Pleader.

The Government Pleader could not inform the Court whether there is any further appeal pending in the matter, as he has no instructions at this stage.

However, having regard to the fact that even if the goods are in the custody of the writ petitioner either after avoiding the tax or in a bid to avoid the tax, the only possible action to be taken by the respondents after succeeding appeal is to collect the tax and penalty, if any.

Insofar as the consignments covered under 2nd and 5th categories are concerned the appellate authority already made adequate provision for ensuring the interests of revenue by directing release of the goods on condition of the petitioner furnishing security equivalent to twice the amount of tax on those consignments.

With regard to other consignments we have already noted, the conclusions reached by the appellate authority. Even assuming that the order of the appellate authority insofar as the category Nos.1 and 3 is found to be wrong in the appeal, the petitioner is an established company from whom it may not be very difficult to recover the tax or penalty if any. It seems, at this stage, as of now there does not appear to be any appeal pending.

In the circumstances, we deem it appropriate to dispose of the writ petition directing the respondents 2 and 3 to implement the order of the first respondent forthwith.

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J.CHELAMESWAR, J.

Date: 29.09.2005

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M.VENKATESWARA REDY, J.

Note: Furnish copy of the order

by wire at party's costs.

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DATED: 29.09.2005